

EX PARTE OR LATE FILED

ORIGINAL

DOW, LOHNES & ALBERTSON, PLLC
ATTORNEYS AT LAW

ORIGINAL

LEONARD J. KENNEDY
DIRECT DIAL 202-776-2505
lkennedy@dlalaw.com

WASHINGTON, D.C.
1200 NEW HAMPSHIRE AVENUE, N.W. • SUITE 800 • WASHINGTON, D.C. 20036-6802
TELEPHONE 202-776-2000 • FACSIMILE 202-776-2222

ONE RAVINIA DRIVE • SUITE 1600
ATLANTA, GEORGIA 30346-2108
TELEPHONE 770-901-8800
FACSIMILE 770-901-8874

July 17, 2000

RECEIVED

JUL 17 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Chairman William E. Kennard
Commissioner Susan Ness
Commissioner Harold Furtchgott-Roth
Commissioner Michael Powell
Commissioner Gloria Tristani
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Ex Parte

Re: **WT Docket No. 97-82**

Dear Chairman Kennard and Commissioners:

Nextel Communications, Inc. ("Nextel") respectfully submits this response to the July 12, 2000 *ex parte* presentation of Northcoast Communications, LLC ("Northcoast") in the above-referenced proceeding. In its presentation, Northcoast provided information regarding its planned buildout and proposed business plan for providing wireless services on its 44 F Block Personal Communications Services ("PCS") licenses and its five D and E Block PCS licenses.

Northcoast attempts to demonstrate that (1) it is a Designated Entity ("DE"), licensed on set-aside spectrum, that has built out a PCS system; and (2) it and other DEs can successfully operate in large markets despite being the sixth or seventh wireless entrant competing with well-established competitors. Northcoast's presentation purports to rebut the showings made by Nextel and other commenters in this proceeding that the investment required to initiate and sustain wireless service today as the sixth or seventh entrant in markets greater than one million persons is beyond the financial means of carriers compliant with the Commission's asset and revenue limits for qualifying as a DE.¹

No. of Copies rec'd 0+2
List ABCDE

¹ According the Commission's Rules, a company qualifies as a DE if its assets do not exceed \$500 million and annual gross revenues are less than \$125 million in each of the last two years.

Nextel has carefully reviewed Northcoast's presentation and respectfully submits that it accomplishes neither objective. First, Northcoast's statements establish that it has yet to deploy service to the public in any market and will not do so until, at the earliest, fourth quarter 2000. Second, Northcoast's presentation is riddled with internal inconsistencies that undermine its arguments and ignore the economic and technical realities of the contemporary wireless telecommunications marketplace. Moreover, Northcoast provides little specific information concerning the financial assumptions underlying its proposed system buildout and business plan. Nonetheless, based on the information Northcoast provided, Nextel submits this response rebutting Northcoast's financial and operational projections and reaffirming Nextel's financial analysis and conclusions concerning the inability of DEs to succeed in today's wireless telecommunications marketplace. In sum, the Commission must accept the overwhelming evidence in the record and change course by refusing to set aside markets for firms unable to achieve the principal purpose of the Budget Act – expeditious provision of service to the public. If anything, as Nextel's comments in this docket support, only 10 MHz of spectrum should be set aside in markets below 1 million POPs.

Northcoast's Presentation Does Not Establish That It Has Built a Competitive Wireless Network

Northcoast's presentation demonstrates that its PCS spectrum currently is unbuilt and, accordingly, is not being used to provide service to the public. In its Comments in this proceeding, Nextel demonstrated that the costs and complexities of building a competitive mobile communications system from scratch are daunting. These costs and complexities are exacerbated when a new entrant intends to compete with the coverage, capacity and services offered by incumbent wireless carriers because these costs are well beyond the financial wherewithal of an entity that meets the Commission's DE requirements -- much less the debt obligations and the need to reach a positive cash flow.² In response, Northcoast asserts that "competition is coming" and presents its buildout plans for a portion of its licensed footprints.³

² Comments of Nextel, filed June 22, 2000, at page 11. Certainly, if an entity can attract sufficient financing to construct a minimal wireless system sufficient to fulfill the Commission's coverage requirements, whether or not it actually provides a service that can compete with incumbent providers, that entity could potentially recover its investment by later selling its spectrum licenses, which it received at a substantial discount at auction, for their fair market value on the open market.

³ July 12 Presentation of Northcoast.

According to its own presentation, however, Northcoast has not constructed or placed into operation **any** of its PCS spectrum in any market. Northcoast projects that it will initiate service in the Cleveland market by the end of this year and in other markets in 2001. Although difficult to determine from its presentation, its 2000-01 buildout appears to cover only a fraction of its licensed footprints. Moreover, its buildout appears concentrated on the very same urbanized areas already served by established incumbent wireless providers. In short, Northcoast fails utterly to demonstrate that it has today or can ever successfully buildout its markets. Thus, while Northcoast accuses AT&T Wireless, Voicestream and other large Commercial Mobile Radio Service carriers of failing to build out all of their PCS spectrum, it appears that Northcoast should take its own advice “not to throw stones” given its own “glass house.”⁴ Northcoast, like most designated entities licensed on the C and F Blocks, has no buildout today in contrast to these other carriers’ extensive networks.

Northcoast’s Proposed Business Plan Is Internally Inconsistent and Ignores the Realities of Today’s Telecommunications Marketplace

1. Nextel Disputes the Sufficiency of Northcoast’s Proposed System Buildout

Northcoast states in its July 12 presentation that it intends to be the “second local telephone provider instead of the 8th wireless provider[.]” that “offer[s] easy to understand, low-cost mobile wireless voice and **high speed data services** as an alternative to wireless service.” (emphasis added).⁵ Northcoast’s wireless voice and high-speed data services, it claims, will allow it to be a “low-cost provider,” using the “latest generation infrastructure” to serve “low to moderate income households.” Nextel submits that these claims are internally inconsistent, and the limited information Northcoast offers only highlights the inconsistencies.

For example, Northcoast provides its estimated cost of building out this proposed system in five markets. In those estimates, Northcoast includes the projected number of cell sites it believes will be necessary to deploy services in each market. These cell site projections for a voice and high-speed data network simply do not support a service that could compete with existing wireless competitors or with the entrenched local telephone company. Additionally, a service that competes with the local phone company – arguably POTS, thus demanding fewer cell sites than a high-speed data network – can be offered on 10 MHz of spectrum, rather than the 20 MHz of spectrum Northcoast claims to need for its business plan.

⁴ *Id.*

⁵ *Id.*

Third generation wireless systems that provide high-speed data services and voice services require extensive capital investment, as Nextel explained in its Comments in this proceeding.⁶ Third generation wireless networks require a significant number of transmitters (or cell sites) due to the propagation characteristics necessary to support the high-speed data rates required of 3G services. In other words, each "cell" must be much smaller than the cells deployed on today's mobile systems.

As the builder of approximately 10,000 digital sites in its near-nationwide wireless network, Nextel is intimately familiar with the infrastructure necessary to provide service in the five markets listed in Northcoast's presentation. Northcoast claims to be constructing a voice and high-speed data system at 1.9 GHz where spectrum propagation characteristics require, in most cases, two times the number of cell sites that are required at 800 MHz. Yet, Northcoast states that it can provide a 1.9 GHz wireless service in competition with the local landline telephone company's ubiquitous coverage with far fewer cell sites than Nextel employs today at 800 MHz.⁷ The following table compares Northcoast's cell site requirements with those Nextel has **already** built and is operating in Northcoast's five example markets:

	<u>Northcoast</u>	<u>Nextel</u>
Columbus, Ohio:	100	141
Cleveland, Ohio:	120	187
Minneapolis, MN:	120	184
Boston, MA:	140	425
Philadelphia, PA:	150	387

Northcoast's projections are grossly insufficient to meet its stated objective of offering a landline-competitive high-speed data and voice service at 1.9 GHz.

⁶ Nextel assumes herein that Northcoast is proposing to construct a 3G system because it proposes to offer high-speed data services that can compete with the data services available from local phone companies. Additionally, that assumption is based on Northcoast's position in this docket asserting that it needs a minimum of 20 MHz to construct a viable 3G voice and data network. However, if Northcoast is in fact proposing to compete only with the basic voice services provided by the local phone company, Northcoast's claimed need for a 20 MHz DE spectrum set-aside is not supported.

⁷ Nextel has been in operation over three years; accordingly, its cell site numbers include sites that have been added to increase capacity as demand for Nextel's service has increased. This does not change the fact that Northcoast's projected site totals still are well below the numbers sufficient to support competitive voice and high-speed data services at 1.9 GHz.

For example, Northcoast states that it will deploy in Boston a fraction of the number of cell sites Nextel has found are necessary to provide **today's** mobile voice and data services at 800 MHz in the Boston market. This approach simply does not add up: a 1.9 GHz voice-only network requires two times as many sites as an 800 MHz network for comparable coverage; a 1.9 GHz system offering 3G high speed data service requires four times more sites than an 800 MHz system in order to provide high speed data throughput; and a wireless system competitive with the ubiquitous coverage and high service quality of the local landline telephone network would mandate an even more site-intensive buildout to provide the same ubiquity and in-building coverage provided by the landline local telephone company. Nextel's extensive real-world operating experience serving more than five million customer units across the nation – including each of Northcoast's five example markets – belies Northcoast's cell site projections. Northcoast's cell site projections simply do not withstand analysis.⁸

2. Nextel Disputes Northcoast's Cell Site Cost Projections and the Validity of its Business Plan

Northcoast's cost estimates for its proposed network are as unrealistic as its desire to be a low-cost wireless service provider. First, Nextel disputes the estimated \$140,000/site capital expenditure Northcoast provides for its site buildout. While this may be an accurate estimate of a PCS cell site supporting today's voice and data technologies, it is well below the costs Nextel has been quoted for deploying cell sites capable of providing 3G voice and high speed data services. Nextel has discussed with several equipment and network vendors the requirements for prospective 3G services. Their cost estimates for just one WCDMA carrier (*i.e.*, the transceiver located at each cell site) averages \$150,000 – not including site acquisitions and development, telco costs, installation and maintenance. The WCDMA carrier alone is more than Northcoast's claimed total cell site construction cost.

Second, in its comments demonstrating that DEs who satisfy the Commission's DE criteria cannot successfully compete in today's wireless marketplace, Nextel assumed that a new entrant small business wireless carrier would, at a minimum, have to replicate the geographic coverage of incumbent wireless providers if it is to be competitive with them. Under this assumption, as

⁸ Given the propagation characteristics of 1.9 GHz, Nextel seriously questions whether Northcoast could launch even a voice-only service, using its projected number of cell sites, that would provide comparable service coverage and quality to that provided by existing wireless providers, much less service coverage and quality comparable to the local phone company.

Nextel showed, it is highly unlikely that a small business would be able to compete effectively. Northcoast's business plan, however, raises the bar with its stated intent to create and provide a service competitive with a deeply entrenched, lower-cost service provider, *i.e.*, local telephone service. To succeed, as discussed above, would require a more extensive buildout, thereby further exacerbating the funding and revenue obstacles inherent in adhering to DE qualifying restrictions.

Given all of the above considerations, Northcoast's presentation does not support its claim of being able to buildout wireless networks capable of competing with landline service, offering high speed data transmission, and at the same time becoming the low cost provider of such service. The inconsistencies in Northcoast's proposal -- e.g. a low-cost provider to the underserved **mainstream** market, yet a **niche** provider; a **low-cost provider**, yet the operator of a **high-cost system**; and a competitor to **ubiquitous** local phone service proposing to build **minimal** cell sites -- thoroughly guts the arguments in Northcoast's presentation.⁹

CONCLUSION

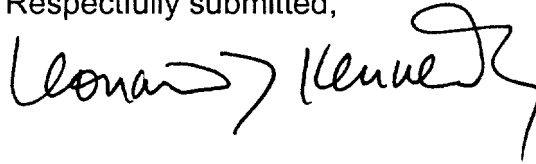
Northcoast's presentation does not demonstrate that it is providing service to the public. Moreover, when analyzed in view of today's marketplace realities, its July 12 presentation does not withstand scrutiny. The combination of 1.9 GHz and the high-speed data requirements required of 3G services results in propagation characteristics that require significant numbers of cell sites to cover a given geographic area. Increasing the number of sites substantially increases the cost of the network buildout. Thus, in Nextel's judgment, Northcoast's projections of constructing only a limited number of cell sites and the resulting lower costs associated with such a network, and its projections of turning cash-flow positive within two years of constructing a voice and high-speed data system by selling low-cost mobile phones to the mass consumer marketplace can only be described as farfetched.

Consequently, Nextel respectfully requests that the Commission reject Northcoast's financial projections and accept its presentation for what it is: further evidence that, in fact, the set aside policy has not resulted in the provision

⁹ In light of the above, Nextel believes Northcoast's projection that it will be cash flow positive in only two years is unrealistic.

of service to the public. Therefore, no C or F Block PCS spectrum should be set aside in the reauction.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Leonard J. Kennedy". The signature is stylized with a large, sweeping "L" and a long, horizontal stroke extending to the right.

Leonard J. Kennedy
Counsel for Nextel Communications, Inc.

cc: Clint Odom
Mark Schneider
Bryan Tramont
Peter Tenhula
Adam Krinsky
Tom Sugrue
Kathleen O'Brien-Ham
Robert Pepper